



MASSACHUSETTS DEPARTMENT OF REVENUE

PERSONAL INCOME TAX

HOMEOWNERS ASSOCIATIONS

NON-EXEMPT FUNCTION INCOME AND DEDUCTIBLE EXPENSES

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FACTS:

Property Associates is an unincorporated condominium association formed by the unit owners of a condominium housing project located in Massachusetts. For federal tax purposes, Property Associates qualifies and elects to be treated as a homeowners association pursuant to section 528 of the Internal Revenue Code.

Property Associates operates a coin-operated laundry for the exclusive use of the association members. In addition, Property Associates rents available parking spaces in the association parking lot to the public.

Property Associates pays its manager a salary of \$24,000 a year. Ten percent of the manager's time during the year is devoted to maintaining the coin-operated laundry and to supervising the association's parking space rental activities.

ISSUE 1:

To what extent, if any, is the income received from the coin-operated laundry and from the parking space rental activity included in Property Associates' gross income?

ISSUE 2:

To what extent, if any, is the manager's salary deductible by Property Associates?

DISCUSSION:

Massachusetts gross income is federal gross income with certain modifications. G.L. c. 62, § 2(a). The exempt function income of a homeowners association that elects under section 528 of the Code is not included in its federal gross income. Income received that is not exempt function income is included in the association's federal gross income. I.R.C. § 528(d).

Exempt function income is any amount received as membership dues, fees or assessments from the owners of the residential units. I.R.C. § 528(d)(3)(A). Amounts received from the association members, however, will not be considered exempt function income if the amounts reflect use of facilities not available through payment of the dues, fees or assessments. Treas. Reg. § 1.528-9(c)(3). Moreover, amounts received from non-members are not exempt function income. Treas. Reg. § 1.528-9(c)(2).

"Qualifying expenditures" within the meaning of section 528 are expenditures incurred by the association to acquire, construct, manage, maintain and care for association property. Treas. Reg. § 1.528-6(b). These expenditures are not deductible by the association because they relate to the association's exempt function income. I.R.C. § 528(d)(1)(B), Treas. Reg. § 1.528-10(c)(1). In contrast, expenses directly connected with the production of income that is not exempt function income are deductible by the association. I.R.C. § 528(d). Where facilities or personnel are used both for exempt functions of the association and the production of gross income, the expenses shall be allocated between the two activities on a reasonable basis. Treas. Reg. § 1.528-6(b).

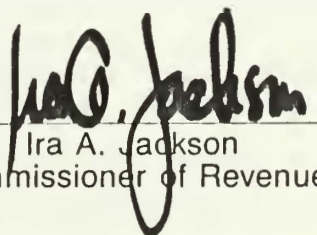
D O R D I R E C T I V E

DIRECTIVE 1: The income received from the coin-operated laundry and from the association's rental activity is included in Property Associates' gross income in that the income is not exempt function income. The association must report this income on a Form 3M.

DIRECTIVE 2: Property Associates may deduct on the Form 3M 10% of the manager's salary as an expense in that 10% of the manager's time is directly connected with the production of gross income. The remaining 90% of the manager's salary is nondeductible because it is connected with the association's exempt function income.

REFERENCE: G.L. c. 62, § 2(a); I.R.C. § 528; Treas. Reg. § 1.528-6(b), -9(c)(2), -9(c)(3), -10(c)(1); DOR-D 86-7.

20 August 1986


Ira A. Jackson
Commissioner of Revenue

**DOR-D
86-18**

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.